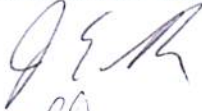


COMMISSIONERS APPROVAL

ROKOSCH 

GRANDSTAFF 

THOMPSON 

CHILCOTT 

DRISCOLL 

PLETTENBERG (Clerk & Recorder)

Date.....August 9, 2007

Members Present.....Commissioner Jim Rokosch,  
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson Commissioner Greg  
Chilcott and Commissioner Kathleen Driscoll

Minutes: Glenda Wiles

The Board met to approve the minutes of May 31<sup>st</sup>, June 19<sup>th</sup>, July 3<sup>rd</sup>, and July 5<sup>th</sup>, 2007.  
**Commissioner Chilcott made a motion to approve the minutes as corrected.**  
**Commissioner Driscoll seconded the motion, all voted 'aye'.**

The Board met for a discussion and decision on the Terry Nelson Family Transfer and Subdivision Evasion issue. Present at this meeting were Terry Nelson, Planner Tristan Riddell, Mr. and Mrs. Arnott, Civil Counsel Alex Beal and numerous citizens. Handouts for this meeting included Civil Counsel's legal opinion on this subdivision evasion, and information prepared on the budget per pupil and roadway costs for improvements of the Stevi Airport Road and the interior road within the subdivision.

Commissioner Rokosch stated the next course of action would be to draft a letter to Mr. Nelson and possibly have a pre-litigation conference if Terry Nelson wanted one prior to any action being filed in court. Alex stated that is the legal option he understood the Commissioners desired. In regard to the legal opinion, Commissioner Rokosch indicated Terry received an 'unjust enrichment' from this subdivision that was not held to subdivision regulations at the time.

Commissioner Rokosch asked Tristan about the park land assessment. Tristan stated the land amount for this size of a subdivision would have been .07 acres for parkland. The Department of Revenue would have assessed the fair market value of the land.

Commissioner Rokosch noted the cost per pupil in the Stevensville School District less any state monies.

Gary Nelson, father of Terry stated for the last 16-18 years he has been a volunteer in the Clerk and Recorder's Office working on the road system (petitions, maps etc). If he got a salary for every hour he has worked he would have obtained \$60,000 to \$70,000 per year. He stated this volunteer work should bear some influence on this issue for Terry.

John Felton stated he is flabbergasted the county could pursue this. Mr. Nelson was in compliance with the law. When he bought his property, he was told he could do a family transfer which was 'false hope'. He thinks this is a personal vendetta against Terry by the Commissioners. He felt this was an inappropriate use of the Commissioners' time when it was already addressed one-year ago. If it is a civil case, have the citizens pursue it on their tax dollars, not his.

Marie Arnott stated Terry did a family transfer then proceeded to sell his property creating a subdivision. She asked about the 6 units that were sold; two of which are still for sale. She asked the Commissioners if they were going to allow the remaining two lots to be sold.

Alex stated there is a deed filed with the Clerk & Recorder. (6 total thus far on the lots.)

Attorney David Marquette stated he represents Terry Nelson. He stated the 'unjust enrichment' is a common law theory used only for restitution. In order to utilize this theory, you must show one benefited in wrong acts, which will require a finding that Terry intentionally evaded subdivision laws. These are arms length transactions and this is stretching the 'unjust enrichment'. He felt the county would have a huge burden proving this. Dave also felt the County would open itself up to selective punitive enforcement as there have been hundreds of exemptions in Ravalli County. When he called the county during this time frame, the family transfers were a recommended alternative by the county. That was a norm back then. This was an approved function a number of years ago and the Commissioners would have to investigate thousands of these. David stated he and his client will challenge this based on selective enforcement. He stated the Commissioners have made themselves clear on this policy now, but they cannot go back retroactively.

Tom Arnott stated right from the start of this problem the county was contacted by his family and other neighbors. But the county did nothing. He stated now the county is going to do something as they will obtain an attorney themselves. The Commissioners (when there were three) should have done something before.

John Vugteveen asked if the county were to pursue this would it selectively finger one person, and if so would they be opening a 'can of worms'? He stated the county needs to fix the loopholes.

Marie Arnott stated 'selective enforcement' is one person getting a ticket when ten others were speeding. And this issue was brought forth to the Commissioners who wrote a letter to Terry almost two years ago and Terry ignored it.

John Felton stated this is a civil issue and the county should not be involved at all.

Public comment was then closed.

Commissioner Rokosch stated this subject property had been proposed as a subdivision prior to the family transfer. He asked Tristan for some background. Tristan replied in August 1998 Cheryl Shelly O'Keef submitted Lincoln Green Lot #1 Subdivision going before the Planning Board in August 1998. Ten comments were received by the Planning Board; 6 of which were talking about the poor conditions of the road, others were on the poor water quality and wildlife habitat. After this public comment, the Planning Board denied the Lincoln Green Lot #1 Subdivision based on public health, safety, road, water and habitat. The Commissioners voted unanimously to support this denial. The Board of County Commissioners issued denial on September 15<sup>th</sup> and nothing was pursued by Mrs. O'Keef.

Commissioner Chilcott asked Tristan to go over the process for family transfers when Terry Nelson's was approved. Tristan stated this was approved in July of 2004. Policy at that time allowed the owner to sell remainder parcels, but gifted parcels must be held for 3 years prior to any sale. In 2005, the County Attorney issued a memo allowing the Clerk & Recorder to hold the deed transfer for 4-5 years. When Terry Nelson filed his request, that memo was yet to be filed with Clerk & Recorder. State law allows for family transfer if you meet the guidelines.

Commissioner Chilcott stated the real criteria to deny is to sell or attempt to evade state law. Tristan stated that is correct, but it is defined well in the county regulations as seen in November 2006, which is what we are currently involved in.

**Commissioner Rokosch noted the decision by the Board today is to draft a letter of request asking Terry Nelson for certain amounts they decide upon.**

Commissioner Grandstaff noted for those who feel the Commissioners should not make a case of this issue, she wants to remind them that now we have a subdivision that has a substandard road. This is a public safety issue and you can not create a subdivision that creates substandard conditions. She asked what happens if there is an accident, who gets sued then? She asked John Felton about being told he could do a family transfer. John stated his realtor told him that.

Commissioner Driscoll stated Terry's knowledge of the local and state regulations has a lot to do with what is going on here today. His knowledge as a consultant and surveyor is 'above the lay persons' knowledge and he knew the law and what he was about to do. She stated she feels Terry took it upon himself to avoid the proper manner of doing this. She advised Terry he is in 'the business' and he knew better. She also noted while she appreciates Gary's comments, his volunteer work has nothing to do with his son, as he is a separate individual.

Commissioner Rokosch stated there was considerable activity going on at that time and maybe it bears examination of the others that pursued these evasion issues.

**Commissioner Grandstaff made a motion to move forward with pursuing a complaint for creating a de facto subdivision within the subdivision exemption. Commissioner Driscoll seconded the motion.**

Discussion of the motion then took place. Commissioner Chilcott stated based on history of family transfers being common; while what Terry did might not be right in what he did, he was not sure they could move forward. He also noted he agrees Terry was well versed on subdivision law. Commissioner Chilcott stated 'some people find the loopholes that benefit their project and this was a loophole you could drive a Mack truck through'. The law does not specify the attempts to evade. The facts are you can transfer the parcels to immediate family. How do we determine future intent at the time of family transfer? If it is being gifted to a family member, how do we look at this down the line as an evasion? Was the intent there at the beginning? He felt that is a matter of interpretation. There was a loophole, so was Terry breaking the law using that loophole? Commissioner Chilcott felt that was personal discretion at the time by Terry. He feels it met the litmus test at the time. He did not feel anyone should point their fingers at the planning staff or the Commissioners because it met the criteria at the time. Now, we have other criteria developed by the County Attorney which we are following. He stated it would be difficult to apply criteria after the fact.

Alex replied if the tract proposed was to be broken up in the past, that might be criteria, or statements people have made.

Tristan read through the evasion criteria at the time of Terry Nelson's application.

Commissioner Chilcott stated so what they are left with after the County Attorney's memo was a way to look at the application. If the evasion was apparent outside, the Clerk & Recorder could refuse and accept it as a deed on one of the gifted tracks. Commissioner Chilcott noted the regulations were revised in 2006 to follow the County Attorney's memo.

Commissioner Rokosch stated that review is the role for the courts. The courts are in the position of determining intent, at the time and subsequent time of subdivision.

Commissioner Thompson stated as for the previous Board of Commissioners doing nothing that is a reference to him. The Commissioners looked at the criteria available, received letters and phone calls, talked to legal counsel and Civil Counsel James McCubbin researched this and told us we needed to change some laws. So we changed the regulations and asked the legislators to change the law on a statewide basis, but that did not happen statewide due to the eastern counties. Commissioner Thompson stated they recognized the problems and that is why they asked the County Attorney for that opinion. To go back retroactively worries him, particularly going into the court to address this selective enforcement issue. He does not see justification for this one. Some

parcels are legitimate transfers. He can not understand transfers to a wife, but we live with the laws that are on the books.

Commissioner Driscoll asked if anyone has asked Terry if he is willing to pay any of these amounts rather than go to court. David Marquette stated that is not an appropriate question if you are threatening litigation. Commissioner Driscoll stated she is not threatening litigation, but feels this must be asked. She stated they have some time to look at the details of this issue and felt this is an advantage to talk to the citizens wanting to work it out.

Commissioner Chilcott stated the regulations have become much more sophisticated over the last five years as has the development community. As the regulations become more cumbersome, the developers review what they can and can not do, looking at loopholes from pro rata shares etc. While that is not right, that has changed over the past few years. It is hard to go back with the regulations we have and find Terry has evaded subdivision review. Commissioner Chilcott agrees it would be his opinion to sit down and sort it out before any filings occur in District Court.

Commissioner Rokosch suggested they put some costs together, draft a letter and see if they can conference over this in order to stay out of court. Commissioner Grandstaff stated the incentive is to have the complaint so Terry has some incentives to sit down with the Commissioners otherwise he will not sit down at all. Commissioner Rokosch stated this is 2007 and Terry has had ample opportunity.

Marie Arnott stated ten wrongs don't make a right. She felt Terry needs to answer for his actions. This property had a red flag when the subdivision was tried and denied previous to Terry's purchase and family transfer. She stated it appears the system is not set up to keep an eye on these properties, but in this case the denial came in 1998 for legitimate reasons, then Terry purchases the property and gives the county residents a subdivision anyway. Why not just do it back then? Terry's intent was very clear in the last three years; and the previous Commissioners did nothing at the time of original complaint.

Commissioner Chilcott replied it is like closing the barn door and the horse is still running around. Marie stated the neighbors tried to corral it before but the Commissioners took no action.

Commissioner Chilcott stated the problem for him is the rules were not in place at the time and they cannot apply the law retroactively.

Jason Bartosick stated going back on someone for intent is difficult. He used the analogy of purchasing the axe, committing a murder then filing charges against the store that sold the axe for the murder. Jason stated if there was a county wide building code, rules could be followed. But the county could not make the houses that are 30 years old comply with the current building codes. He stated there are some challenges here in court. If we pass too many laws then we will all be out of compliance and lose our freedoms.

Commissioner Driscoll stated freedoms come with responsibility, and that is what we are addressing now with one individual who affects the balance of the community.

John stated if the Board retroactively pursues this, then they need to look at everyone. We will need five more commissioners.

Gary Nelson stated it is unconstitutional for de facto laws. It is also presumption to talk about Terry's intent. He and his wife have looked at one of the parcels to build a one story house on. Should he ask the Commissioner s first before he buys a lot? **Gary stated it was Terry's intent to sell the lots and put the money into a savings account for their kids.**

Commissioner Chilcott asked Dave if the county should seek litigation in order to start some resolution through mitigation. Dave stated he always advises his client to try and resolve conflicts prior to litigation. However, he cautioned the Commissioners these issues could be a can of worms if it goes to court.

Alex suggested the Commissioners prepare a demand letter in order to start the dialog on this issue without litigation.

**Commissioner Grandstaff withdrew her motion. Commissioner Driscoll withdrew her second. Motion withdrawn.**

**Commissioner Grandstaff made a motion to send a demand letter to Terry in order to pursue a remedy for de facto subdivision created under family transfer law. Commissioner Driscoll seconded the motion.**

Discussion followed regarding Alex drawing up a letter seeking certain dollar amounts. Commissioner Thompson asked if that letter would move the Commissioners toward a law suit. Alex replied it is merely an attempt to resolve the issue and the Commissioners would need another meeting specifically giving him direction to move forward with litigation. Commissioner Chilcott stated they have some handouts to review and asked how they should review them. Commissioner Rokosch replied they should be reviewed along with fire contributions. Commissioner Chilcott stated he is confused as to the demand amounts. Commissioner Grandstaff stated they have numbers which include the pro rata. Commissioner Chilcott replied if the Commissioners are going to demand something what would that demand be based upon. Commissioner Grandstaff replied those amounts are listed, along with cash in lieu from parks, suggesting \$500.00 per lot for the school and fire department. Alex stated the standard would be those things that would have been paid out for a subdivision. Alex stated he is ok reviewing these numbers and the Commissioners will review the numbers prior to the letter going out.

**All voted "aye".**

In other business the Board held budget deliberations for Veterans Services, School Superintendent, Senior Citizens, Comprehensive Insurance, Employee Health

Contribution, Museum, Library, Cemetery, Public Safety, and the Road & Bridge Department.

Commissioner Thompson attended a Human Resource meeting during the noon hours in Hamilton.